STATE OF MICHIGAN

COURT OF APPEALS

In re L. WILSON, Minor.

UNPUBLISHED
July 16, 2015

Nos. 325283; 325284
Oakland Circuit Court
Family Division
LC No. 14-824811-NA

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

In Docket Nos. 325283 and 325284, respondent mother and respondent father, respectively, appeal as of right the trial court's order terminating their parental rights to minor child LW pursuant to MCL 712A.19b(3)(g), (*i*), (j), and (*l*). On appeal, respondent father challenges the validity of the trial court's jurisdiction and respondent mother challenges the best interest determination. We affirm.

This is respondents' second termination of parental rights case. Respondents previously had their rights terminated to two older children, AK and BK.[1] Despite their history with the Department of Human Services (DHS), respondents did not inform DHS about LW's birth. They also gave LW a different surname than that of his siblings and sent him to live with respondent father's aunt, Judy Wilson, immediately after he was born.

I. JURISDICTION

Respondent father argues that the trial court lacked jurisdiction to terminate his parental rights. We disagree.

This Court reviews a trial court's decision to assert jurisdiction in a termination proceeding de novo. *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000). Jurisdiction must be established by a preponderance of the evidence. See *In re SLH*, 277 Mich App 662, 673-674; 747 NW2d 547 (2008), citing MCR 3.977(E). "We review the trial court's decision to

[1] See *In re Kazmierczak Minors*, unpublished opinion per curiam of the Court of Appeals, issued December 4, 2014 (Docket Nos. 320920 and 320922).

exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

At the adjudication respondent father pleaded no contest to the allegations in the petition. "The court obtains jurisdiction as a result of a plea if a respondent makes a plea admission or of no contest to the original allegations in the petition or to the allegations in an amended petition." *In re SLH*, 277 Mich App at 669, citing MCR 3.971(A). The trial court informed respondent father that, by entering the plea, he was consenting to the trial court's jurisdiction and to its authority to make placement decisions for LW, and respondent father explicitly agreed. The allegations in the petition were factually supported by testimony from Child Protective Services (CPS) worker Simone Darby. For these reasons alone, jurisdiction was proper.

Despite his plea, respondent father contends that the trial court lacked jurisdiction to terminate his rights because he and respondent mother had placed LW with a relative. "As long as the children are provided adequate care, state interference in such decisions [to place a child with a relative] is not warranted." *In re Sanders*, 495 Mich 394, 420-421; 852 NW2d 524 (2014). The state may intervene, however, if the evidence demonstrates that the relative placement does not provide the child with adequate care. See *In the Matter of Taurus F*, 415 Mich 512, 537; 330 NW2d 33 (1982) (a parent may place the child without state interference "as long as the child is adequately cared for"). According to testimony from Darby, and from DHS foster care worker Megan McAlister, Wilson could not provide proper care for LW because she had failed to intervene in the prior termination case when AK was visibly malnourished. Additionally, Wilson was at least complicit in the apparent plan to conceal LW's birth. Thus, because LW was not placed with a relative who could provide adequate care, there was no barrier to jurisdiction.

Jurisdiction was additionally proper under the doctrine of anticipatory neglect, which recognizes that, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014) (citation and quotations omitted). The anticipatory neglect doctrine permits "[a] child [to] come within the jurisdiction of the court solely on the basis of a parent's treatment of another child." *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005); see also *In re BZ*, 264 Mich App at 296. In this case, respondent father's neglect of AK provided a basis to exercise jurisdiction over LW.

II. BEST INTEREST

Respondent mother argues that the termination of her parental rights was not in LW's best interest. We disagree.

This Court reviews a trial court's finding that termination is in a child's best interest for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction a mistake has been made." *Id*. Whether termination of parental rights is in the child's best interest must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

"In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). If a respondent has a history of involvement in child custody proceedings, the trial court may consider whether the parent complied with and benefited from the services offered under a previous parent agency agreement. *Id*. at 43. Psychological evaluations, parenting techniques, and age of the child are also relevant. *In re Jones*, 286 Mich App 126, 130-131; 777 NW2d 728 (2009). Placement of the child with a relative "weighs against termination under MCL 712A.19a(6)(a)," and must be considered as part of the best interest determination. *In re Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

Respondent mother shared no familial bond with LW. There was no evidence that she ever saw LW after he went home from the hospital with Wilson. Parenting time was suspended during the entirety of the lower court proceedings. And indeed, even before the trial court suspended parenting time, counsel for respondent mother represented that, "[respondent mother], in my understanding, ha[d] been staying away," due to the prior termination. See, e.g., *In re BZ*, 264 Mich App at 301 (affirming termination where the respondent "had minimal meaningful contact with her sons, thus virtually precluding the development of any family bonds").

Respondent mother acknowledges that her "poor parenting in the previous case" with AK and BK reflects negatively on her ability to care for LW. *In re LaFrance*, 306 Mich App at 730. When AK was brought in to DHS's custody, he was malnourished to the point of requiring hospitalization. Yet in the instant case, respondent mother demonstrated a continued lack of understanding of the seriousness of the situation and of her responsibility for AK's condition. Her psychological evaluation showed emotional detachment, which was matched by her failure to express any feelings of love or affection for her children.

The conditions that led to the prior termination also persist. Respondent mother lacks adequate housing, remains unemployed, and has not completed her high school education. She failed to benefit from the services offered to her within the last year, including intensive parenting classes. Respondent mother also displayed poor judgment in concealing LW from DHS. And though respondent mother's cognitive limitations may have impaired her decision making and her ability to learn parenting skills, it was not improper for the lower court to prioritize LW's needs over respondent mother's needs. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009) (noting that "once a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in protection of the child").

Respondent mother suggests that, because she intended to place Lucas with Wilson, the trial court was obligated to compare Wilson's home to the foster home. This is not the case. Although "the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination is in the children's best interest," *In re Olive/Metts*, 297 Mich App at 43, LW was not in the custody of a relative at the time of the termination hearing; he was in a foster home with AK and BK. In any event, the trial court did consider placement with Wilson, and found that LW could not be placed with her because she lacked a foster care license. Further, the trial court expressed significant concern

over the fact that Wilson had filed a petition to become LW's guardian without disclosing respondents' prior termination. By comparison, LW was progressing well in his foster home, where he could develop a relationship with his siblings. "If it is in the best interests of the child, the probate court may properly terminate parental rights instead of placing the child with relatives." *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds by *In re Morris*, 491 Mich 81 (2012). Considering respondent mother's continued difficulties, the trial court did not clearly err in finding that termination was in LW's best interest.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter